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FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1984

MARCH 21, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. PEPPER, from the Committee on Rules, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany House Concurrent Resolution 91]

The Committee on Rules, to whom was referred House Concurrent Resolution 91, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution do pass.

INTRODUCTION AND BACKGROUND

Jurisdiction of the Committee on Rules over Budget Enforcement Procedures

During the last few years, the first budget resolution has been used as the vehicle for enactment, on an ad hoc basis, of novel and far reaching budget enforcement procedures.

These procedures, including for example reconciliation instructions in a first budget resolution, binding credit budget ceilings, and deferred enrollment of bills that breach S302 spending allocations and subdivisions, have drastically altered the Budget Act and significantly affected the operations of almost every committee of the House.

Clause 1(q) of Rule X vests in the Committee on Rules legislative jurisdiction over all matters affecting the Rules of the House, the Joint Rules, and the order of business. In addition, the Committee reported the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344) and therefore possesses jurisdiction over any legislation affecting the operation of that Act in the Congress. The Committee therefore has jurisdiction over budget procedures inserted in a

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first budget resolution not specifically authorized by the Budget Act, that affect the operation of the Act or the Rules of the House.

The Rules Committee may properly assert this jurisdiction, as it has in the present instance, by seeking and receiving a sequential referral of a first budget resolution for purposes of considering rule-making provisions contained in it. Clause 5 of Rule X requires sequential and other multiple referrals when appropriate "to assure to the maximum extent feasible that each committee which has jurisdiction under clause 1 over the subject matter of any provision thereof will have responsibility for considering such provision and reporting to the House with respect thereto."

It should be noted that provisions of the rules of the House relating to the budget process were enacted into law as part of the Congressional Budget Act on July 12, 1974. However, the Committee Reform Amendments of 1974 (H. Res. 98, 93rd Congress), which is the source of the multiple referral rule, was adopted later, on October 8, 1974. There can be no question that, to the extent the rule might be viewed as divergent from the provisions of the Congressional Budget Act, the former should be regarded as controlling. The language of the 1974 amendment to the rule specifically provided:

> Any precedents, rulings, and procedures in effect prior to the Ninety-Fourth Congress shall be applied with respect to reference under this clause only to the extent that they will contribute to the achievement of the objectives of this clause.

RECENT DEVELOPMENTS IN THE AREA OF BUDGET ENFORCEMENT PROCEDURES

Many of the ad hoc procedures inserted in first budget resolutions, as can be expected in the case of such broad and important provisions, have been the subject of considerable controversy in the House. The Committee recognizes that this controversy is related in part to the jurisdictional concerns of various committees affected by these enforcement procedures. The Committee has included in this report specific comments about the past use of ad hoc budget enforcement procedures. These comments can be found in the section entitled "Oversight Findings."

At this point, the Committee wishes to state clearly its commitment to the proper enforcement of budgetary ceilings and floors set by the Congress. The Committee understands the difficult task of the Budget Committee in this area and will continue to support the Budget Committee's efforts to formulate and implement reasonable and effective enforcement procedures.

The controversy about budget enforcement is also part of a larger concern among Members about the viability of the Budget Process itself. Beginning late in the 97th Congress and continuing into the 98th Congress, there has been a new phase of widespread examination of the process and publication of a number of serious proposals for its reform. The Committee views its decision to seek referral of the First Budget Resolution this year as integrally related to a number of recent activities aimed at making the formulation, implementation and enforcement of the congressional budget a more open and cooperative process. It is important to note these developments here.

Creation of the Rules Committee Task Force on the Budget Process

Established by former Rules Committee Chairman Richard Bolling in March 1982 and continued in the 98th Congress by Chairman Pepper, the task force, chaired by Representative Anthony Beilenson, is charged with a comprehensive review of the Congressional Budget Process. The task force and its chairman have been an important source of advice and information on the budget process for the Committee. In addition, the task force has recommended a number of improvements for the budget process in the House, including those contained in H. Res. 65 currently pending before the Rules Committee. The Committee believes that adoption of the resolution would help make the process work better. In another significant initiative, Representative Beilenson proposed to Chairman Jones in January that the Budget Committee make its proposed budget procedures public and solicit on them prior to Committee markup on the First Budget Resolution.

Democratic Caucus Understanding

In last December's meeting of the Democratic Caucus, Chairman James R. Jones of the Budget Committee and Chairman John Dingell of the Energy and Commerce Committee engaged in a colloquy that embodied their agreement for resolving a number of budget controversies. The Committee commends both chairman for their very significant efforts to improve the budget process in this regard.

Budget Committee Activities

In February, Chairman Jones met with representatives of authorizing committees and the Appropriations Committee in an effort to make the March 15th reports to the Budget Committee less onerous and more useful. The chairman has also worked with the leadership and committees of the House to ensure that these parties are properly consulted on the substantive and procedural aspects of the budget resolution.

Representative Leon Panetta, Chairman of the Budget Committee Task Force on the Budget Process, has made very significant efforts to consult with the leadership and the affected committees of the House on budget enforcement procedures. These efforts of Chairman Jones and Rep. Panetta have been critically important in achieving this year's more open budget process.

Rules Committee Sequential Referral

The aim of the Committee in seeking this referral of the First Budget Resolution is the same as that which motivated its "automatic referral" provision, paragraph (a) of H. Res. 65.

As mentioned above in this report, the Committee is firmly committed to meaningful budget discipline, and will support the efforts of the Committee on the Budget to achieve that goal. However, the formulation and implementation of budget enforcement procedures should be a cooperative enterprise in the House. The Committee means to ensure that there will be an independent forum available where all parties to the process can examine proposed procedures and comment upon them.

The Committee expresses its gratitude to House leadership, the Budget Committee, the authorizing and Appropriations Committees, and the Rules Committee Task Force on the Budget Process. Be-

cause of their constructive efforts, the process of formulating the First Budget Resolution has been much more open and cooperative. The Committee encourages all of these parties to continue their efforts in this regard.

Finally, the Committee wishes to recognize the contributions of its Members, who also sit on the House Budget Committee: Representative Delbert Latta, and two new Members of the Budget Committee, Representative Butler Derrick and Representative Martin Frost. They have been an invaluable liaison between the Rules and Budget Committees.

OVERSIGHT FINDINGS

Pursuant to Clause 2(1)(3)(A) of Rule XI, this section contains the Committee's findings regarding the formulation and implementation of ad hoc budget enforcement procedures in the House of Representatives. It is appropriate to begin with a statement outlining the authority cited by the Budget Committee to include such changes in a first budget resolution.

Section 301(a)(1)–(6) of the Budget Act specifically requires that certain items appear in first budget resolutions. These items include levels of budget authority, outlays, revenues and borrowing, the amount of any deficit or surplus, and in certain circumstances, a timetable for reducing unemployment. In addition to these items, other material and procedures have been introduced into first budget resolutions under the authority of the so-called "elastic clauses." These provisions are described below:

Section 301(a)(7) provides that budget resolutions may include "such other matters relating to the budget as may be appropriate to carry out the purposes of this Act."

Section 301(b)(1) provides that a first budget resolution may require all or certain budget authority and/or entitlement bills not to be enrolled until adoption of the second budget resolution or until adoption of reconsiliation measures if directed by the second budget resolution.

Section 301(b)(2) states "The first concurrent resolution on the budget may also require any other procedure which is considered appropriate to carry out the purposes of this Act."

The conferees on the Budget Act clearly saw that the new budget process would require some modification as Congress gained experience with the process and its problems. The joint statement of managers states that Section 302(b) "authorizes Congress to devise any procedure relating to the budget process and prescribed its implementation in the ensuing fiscal year." However, the joint statement of managers also set specific limits to this authority. It does not apply to "jurisdiction of committees, the authorization of budget authority or . . . permanent changes in congressional procedures."

Faced with a growing deficit in recent years, the House and its Budget Committee have used these procedural sections to create a variety of new mechanisms of budget control. These mechanisms include:

(1) The deferred enrollment provision [§ 301(b)(1)], has been used in two different ways during the last three years to establish binding micro-level ceilings (at the subcommittee or program subdivision level required by § 302[b]) in the First Budget Resolution. The procedure

contained in the First Budget Resolution for FY 1983 authorized deferral of enrollment of spending bills whose enactment would cause total discretionary authority levels for their subcommittee or program to exceed its allocation.

(2) Reconciliation has been directed in the first, rather than the second budget resolution, and reconciliation has been applied to the current law base rather than only to new entitlement and appropriations bills enacted between May 15 and September 15, as was assumed when the Act was passed. Reconciliation has also been directed at authorization levels.

(3) Multiyear and credit budgets have been initiated. The credit budget has included functions, allocations and subdivisions, with the aggregates to be enforced by points of order.

(4) The optional second budget resolution as implemented in the First Budget Resolution for FY 1983 means that the point of order sanction provided by the Congressional Budget Act is used to enforce aggregate spending ceilings and floors established at an early stage of the deliberation on the budget—rather than, as originally contemplated, ceilings and floors established by a mandatory second budget resolution which took into account (1) mid-year reestimates; (2) changes in requirements established during detailed consideration of the budget bills during the months just preceding the beginning of the fiscal year; (3) any policy adjustments determined to be necessary to meet the needs of a changing economy as revealed in a Budget Committee review just prior to the beginning of the fiscal year.

The committee strongly believes that Congress must have the flexibility to create new budget procedures as needed, and indeed, Congress must have the opportunity to revise the Act itself if clearly superior alternative procedures are discovered. The Committee on the Budget has the technical skill and the day-to-day experience in budgeting needed to recommend proposals for new procedures or adjustments of ongoing procedures within the limited scope of authority granted in section 301(b) of the Act. However, in the exercise of its original jurisdiction over the Rules of the House and specifically the Budget Act and amendments thereto, the Rules Committee does expect future recommendations to be submitted to it for consideration and appropriate action as has been done in this case.

The changes in budget procedures adopted by the Congress during the last three years have truly been fundamental. The Joint Study Committee on Budget Control's concept of a binding first budget resolution was consciously rejected by the House in fashioning the Budget Act. Yet, use of the optional second budget resolution provisions and use of deferred enrollment tied to subcommittee or program [§ 302(b)] spending subdivisions has given Congress in effect a binding first resolution. Also, some of the ad hoc procedures adopted in first budget resolutions, particularly those contained in the Gramm-Latta II floor substitute to the first budget resolution for FY 1982 (H. Con. Res. 115) may well have gone too far in inhibiting the normal and proper functioning of the committee system in the House.

The manner in which procedural changes occur is often as significant as their substance. They can originate in the House Budget Committee itself, through floor amendments including procedural provisions, or through agreements in conference to Senate-initiated procedural

changes. A major problem in the past has been that procedural changes—though highly significant—receive relatively little attention. The focus during committee, floor and conference deliberation on budget resolutions is the fiscal plan and the budget priorities embodied within that plan. Once major fiscal plan and the budget priorities embodied within that plan. Once major fiscal and priority issues are resolved, procedural matters are often dealt with at the last minute, in a confused setting.

Another unfortunate legacy of procedural changes has been that affected parties (committees and Members) often feel that they have not been adequately consulted about procedural changes that can profoundly change their way of doing business. Controversy and misunderstanding often result. The problem was exemplified during consideration of the first budget resolution for FY 1983 (H. Con. Res. 35). An amendment striking out deferred enrollment procedures from the reported budget resolution and its major substitutes passed the House twice by votes of 212–205. The Committee on Rules is seriously concerned about the tension among parties to the budget process in the House and strongly believes that the threat to the budget process posed by misunderstanding and ill-will must be rectified.

At times in the past, this lack of attention to budget procedures has resulted that few members or staff understand clearly the procedural changes that have been implemented. The new procedures are usually vary complex, and their purposes and the authority and duties of the major actors responsible for their implementation are difficult to explain and to understand.

In this regard, the Committee wishes to commend Chairman Jones of the Budget Committee and Represenative Leon Panetta, Chairman of the Budget Committee Task Force on the Budget Process, for their efforts to explain and receive comment on proposed budget procedures for FY 1984 prior to Budget Committee markup of the first budget resolution.

It is the strong view of the Rules Committee hat successful operation of the budget process will require notice by the Budget Committee of procedural matters proposed to be included in budget resolution as early as possible in the session in which they are to be implemented. To be successful these matters must receive the same level of energy and deliberation as the major decisions on fiscal and budget priority policy incorporated in budget resolutions.

OVERSIGHT STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS FOR FY 1984

Pursuant to clause 2(1)(3)(D) of Rule XI, the Committee states that it has received no oversight findings by the Government of Operations Committee on budget enforcement issues. However, the Committee notes with appreciation that Government Operations Committee Chairman Jack Brooks and Ranking Minority Member Frank Horton appeared jointly to discuss budget process issues before the Rules Committee Task Force. The Committee looks forward to cooperating with the Government Operations Committee on budget process matters.

SUMMARY OF PROCEDURES INCLUDED IN FIRST BUDGET RESOLUTION FOR FY 1984

Reconciliation

Section 2 directs seven House committees to report changes in law within their jurisdictions to achieve reductions in spending or increases in revenues.

Section 3(a) directs all committees but the Ways and Means Committee to submit recommendations to the Budget Committee not later than June 6, after which the Budget Committee shall report a reconciliation bill to the House incorporating all recommendations without any substantive revision.

Section 3(b) provides that any committee reporting legislation to the House pursuant to reconciliation instructions by June 1, 1983 is exempt from section 3(a).

Section 3(c) directs the Ways and Means Committee to report its recommendations to the House by June 1, 1983. This subsection also provides for appropriate referrals under House Rule X, if these recommendations contain new or expanded taxes to directly finance programs, or new or expanded user fees within the jurisdiction of any other committee of the House.

Deferred Enrollment

Section 4 establishes that any bill or resolution providing new discretionary budget authority or new entitlement authority, which exceeds the allocation of such authority pursuant to section 302(a) of the Congressional Budget Act shall not be enrolled until after Congress has completed action on the second budget resolution, or until October 1, 1983, whichever occurs first.

Optional Second Budget Resolution

Section 5(a) provides that if Congress has not completed action by October 1, 1983 on the second concurrent resolution for fiscal year 1984 required by the Congressional Budget Act, then the first budget resolution shall be deemed to be the second for the purposes of section 311 of the Act. Section 311 establishes a point of order against measures that would cause the aggregate budget authority and outlay ceilings or the aggregate revenue floor to be breached. This subsection further provides, for purposes of enforcement under section 311, that after October 1, 1983 the Budget Committee may report to the House a simple or concurrent resolution revising the aggregate budget authority, outlay and revenue levels due to changes in technical and economic assumptions.

Section 5(b) requires the report on a resolution revising the budget aggregates due to changes in technical and economic assumptions to include a revised allocation of the appropriate budget aggregates to the committees of the House for purposes of section 302(a) of the CBA.

Section 5(c) provides that if a measure within the jurisdiction of a committee would not breach the section 302(a) allocation of new discretionary budget authority or new entitlement authority to the committee for fiscal year 1984, then that measure would not be subject to the point of order under section 311 of the Act. This subsection does not apply if a second budget resolution is adopted.

Section 5(d) limits the operation of this section until such time as Congress completes action on any subsequent budget resolution for fiscal year 1984.

COMMITTEF ACTION

On March 21, 1983 the Committee held hearings on the rulemaking provisions of H. Con. Res. 91. Witnesses included Chairman Jones and Representative Panetta of the Budget Committee, Chairman Perkins of the Education and Labor Committee, Chairman Dingell of the Energy and Commerce Committee, Chairman Ford of the Post Office and Civil Service Committee anl Chairman Howard of the Committee on Public Works and Transportation. The four authorizing committee chairmen complimented Messrs. Jones and Panetta for consulting with the other committees of the House in formulating this year's budget enforcement procedures. The Chairmen stated that the process worked better than ever before because of this consultation.

The four chairmen also expressed approval of the Rules Committee decision to seek sequential referral of the First Budget Resolution and praised Representative Beilenson and his Task Force on the Budget Process for their help in making this year's process a success. Finally, the Chairmen express strong support for rapid adoption of the task force recommendations contained in H. Res. 65 as soon as possible.

Chairman Jones thanked the Rules Committee and other committees for their cooperation and cautioned, as did Chairman Perkins, against allowing the excesses of the Gramm-Latta II substitute to the First Budget Resolution for FY 1982 (H. Con. Res. 115) to be repeated.

Representative Panetta explained this year's procedures in detail and endorsed this year's consultative approach to budget enforcement.

COMMITTEE VOTE

Pursuant to clause 2(1)(2)(B) of Rule XI, the Committee reports that on the motion of Mr. Beilenson, H. Con. Res. 91, was favorably reported without amendment by voice vote on March 21, 1983.

OTHER COMPLIANCE WITH REPORT REQUIREMENTS IMPOSED BY THE HOUSE RULES

With respect to the requirement of clause 2(1)(3)(B) of Rule XI, the Committee states that the procedural provisions of the concurrent resolution considered by the Committee do not provide new budget authority or new or increased tax expenditures.

With respect to the requirement of clause 2(1)(3)(C) of Rule XI, the Committee states that no cost estimate and comparison has been timely received from the Director of the Congressional Budget Office.

ADDITIONAL VIEWS OF HON. TRENT LOTT

This is the first year the Rules Committee has exercised its option for a sequential referral of a budget resolution containing special procedures. The way in which this responsibility has been executed should give rise to a special review of the Rules Committee's procedures.

At noon on Monday, March 21st, the Budget Committee filed its budget resolution and report, and the resolution was sequentially referred to the Rules Committee with a deadline for reporting of not later than midnight Tuesday, March 22d. At 1:15 p.m. on Monday the Rules Committee convened its hearing on the procedural aspects of the budget resolution and, after hearing from several witnesses, at 2:15 pm., the motion to report the budget resolution without amendment was adopted. The minority requested an opportunity to file views on the resolution and was informed it would have only one-hour to do so, despite the fact that Rules Committee rules calls for "a reasonable amount of time to submit views," and despite the fact that Rules Committee had until midnight Tuesday to report and the matter wasn't scheduled for floor consideration until Wednesday.

It is especially interesting to note the haste with which this procedural portion of the budget resolution was dealt with when one considers the amount of energy and pressure that was expended on forcing such a Rules Committee review in the first place. The main complaint was that each new budget resolution contained new procedures never contemplated or specifically provided for in the Budget Act. It certainly is true that the budget process has evolved over the years into a much stronger mechanism for fiscal discipline. But, contrary to what some contend, the procedural innovations were never a secret, sprung at the last minute on an unsuspecting House. They were introduced with bipartisan agreement both on the Budget Committee and in the leadership.

This year the Committee on the Budget took three steps in a different procedural direction. They were steps back. Unlike last year's budget resolution, the pending resolution would permit committees to report separate reconciliation bills rather than report directly to the Budget Committee for packaging into a single bill. This will remove any meaningful Budget Committee oversight for the reconciliation process. Second, this resolution eliminates last year's provision for deferred enrollment of bills which exceed not only their allocations under section 302 of the Budget Act, but appropriations subdivisions as well. By not including subdivisions, the only appropriations bill that might be deferred would be one of the last to be acted on since until that time the Appropriations Committee would still be within its overall committee allocation.

Finally this budget resolution introduces a new mechanism for adjusting figures in the first budget resolution due to changes in

technical and economic assumptions. Under this mechanism the Budget Committee may report a simple or concurrent resolution adjusting the aggregates in the first resolution for budget authority, outlay and revenues, to reflect a changing economic situation rather than and policy changes. Originally the Budget Committee proposed that these special "adjustment" resolutions be brought to the floor as priviliged, subject to one-hour of debate and no amendments. The current version would require a rule on any such resolution. But, chances are a closed rule will be sought. The question thus arises: will there be no question that the changes made are strictly for technical and economic reasons and not due to any policy enactments of Congress? Are the changes in technical and economic assumptions to be based on existing or anticipated conditons? These questions are not addressed in the Budget Committee's report on this new provision, nor did the Rules Committee, under its brief flex of its original jurisdiction muscle, seek to resolve these questions. The potential for political abuse of such an abbreviated process remains great so long as definitions and objective measures are not set in concrete.

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